
COMMONWEALTH OF VIRGINIA



OFFICE OF THE GOVERNOR

Executive Order No. 51 (2012)

Allocation of the Remaining Portion of the Commonwealth's Share of the Calendar Year 2009 and 2010 National Limitation for Qualified School Construction Bonds Under the American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5, 123 Stat. 355 (2009)) was enacted on February 17, 2009 ("ARRA"). ARRA added Section 54F to the Internal Revenue Code of 1986, as amended ("IRC"), to provide for the issuance of qualified school construction bonds ("QSCBs"). QSCBs are tax credit bonds that may be issued to finance the construction, rehabilitation, or repair of a public school facility or for qualifying public school facility land acquisitions ("Qualified Projects"). QSCBs were originally designed as taxable bonds providing the QSCB holder with a federal tax credit in lieu of interest. In the Hiring Incentives to Restore Employment Act (Pub. L. No. 111-147, 124 Stat. 71 (2010)), enacted March 18, 2010, Congress provided a direct payment subsidy option whereby an issuer of QSCBs could elect to receive a subsidy payment from the federal government on each interest payment date intended to be equal to the amount of coupon interest payable on such date.

One of the conditions for the valid issuance of QSCBs is the receipt of an allocation of the national limitation under IRC Section 54F(c) sufficient to cover the maximum face amount of the QSCBs to be issued (a "Volume Cap Allocation"). IRC Section 54F created a national limitation of \$11 billion for each of the calendar years 2009 and 2010, with a provision allowing carryforwards of any unused limitation amounts to calendar years after 2010. The U.S. Secretary of the Treasury made allocations of the calendar year 2009 and 2010 national limitation amounts to the states and certain "large local education agencies" in accordance the formulae set forth in IRC Section 54F. Pursuant to Notice 2009-35 of the Internal Revenue Service (IRB 2009-17, dated April 27, 2009), the share of the calendar year 2009 national limitation allocated to the Commonwealth of Virginia (the "Commonwealth" or "Virginia") was \$191,077,000 (the "2009 Commonwealth Share") and,

pursuant to Notice 2010-17 (IRB 2010-14, dated March 17, 2010), the share of the calendar year 2010 national limitation allocated to the Commonwealth was \$172,249,000 (the "2010 Commonwealth Share").

IRC Section 54F(d)(1) also provides that the national limitation amount allocated to a state for any calendar year shall be allocated by a "state agency" to qualified issuers within the state. The General Assembly has provided no specific guidance on how such allocations are to be made in Virginia.

Reference is made to Executive Order 34 (2011), issued June 10, 2011 ("Executive Order 34"), and Executive Order 42 (2011), issued November 22, 2011 ("Executive Order 42"), for the prior applications of the 2009 and 2010 Commonwealth Shares and the determination of the basis on which a portion of the below-described allocations are being made.

As of the date of this Executive Order, the Volume Cap Allocation remaining (the "Carryforward Amount") from the 2010 Commonwealth Share is \$21,252,015.50 and there is no Volume Cap Allocation remaining from the 2009 Commonwealth Share.

As of the date of this Executive Order, \$16,910,000 of the Carryforward Amount has been allocated pursuant to Executive Order 42 and Executive Order 34. It was anticipated in such Executive Orders that the Virginia Public School Authority ("VPSA") would provide another opportunity for such localities to participate in a future sale of QSCBs by VPSA. VPSA has postponed issuing another series of QSCBs for these localities in order to provide the Virginia Department of Education ("VDOE") with an opportunity to allocate the remaining \$4,342,015.50 of Carryforward Amount so that all of the Carryforward Amount could be issued in the next series of QSCBs issued by VPSA.

On March 20, 2012, the Virginia Department of Education ("VDOE") surveyed the localities with projects on the First Priority Waiting List for assistance from the Literary Fund ("FPWL") to determine which FPWL localities were interested in pursuing, and could qualify for, QSCB financing through a VPSA pooled QSCB issue in the late summer of 2012.

VPSA is scheduled to issue the next series of QSCBs in the fall of 2012 (the "2012-1 QSCBs").

On March 2, 2011, VDOE announced the allocation of the then remaining 2009 and 2010 Commonwealth Shares to fully or partially fund 41 new construction, renovation, and expansion application-based projects in 33 school divisions. Such announcement will be referred to below as the "VDOE Announcement." VDOE has advised me that Richmond County, Virginia, and Buena Vista, Virginia, received QSCB allocations pursuant to the VDOE Announcement. VDOE has also advised me that pursuant to the authorization in Executive Order No. 42, VDOE reallocated some of the Volume Cap Allocation waived by the awarded localities to Gloucester County and Louisa County, to address emergencies in certain school divisions arising from 5.8 magnitude earthquake that occurred on August 23, 2011, Hurricane Irene, and other bonafide emergency situations significantly affecting the conditions of a public school building. These allocations from Executive Order 42 and Executive Order 34 expired June 30, 2012, before VPSA was able to have their next QSCBs sale. Furthermore, VDOE has determined which FPWL localities are interested in pursuing, and have qualifying projects for, QSCB financing.

The VDOE has advised me of these qualifying projects and maximum face amounts of QSCBs for each such project proposed to be included in the 2012-1 QSCBs. Such projects and the localities in which they are located will be referred to below respectively as the "Awarded Projects" and the "Awarded Localities."

Accordingly, by virtue of the powers invested in me by Article V of the Constitution of Virginia and Â§ 2.2-103 of the Code of Virginia as Governor of the Commonwealth of Virginia, I hereby (i) reissue to VPSA the Volume Cap Allocation previously-issued pursuant to Executive Order 42 and Executive Order 34 for the purpose of issuing QSCBs for the benefit of Buena Vista, Gloucester County, Louisa County, and Richmond County, as listed below in an aggregate face amount up to the respective maximum face amount listed below and (ii) provide a Volume Cap Allocation to VPSA pursuant to IRC Section 54F(d)(1) from the Carryforward Amount in an amount sufficient for VPSA to issue QSCBs for the benefit of Caroline County, Richmond County, and Smyth County listed below in an aggregate face amount up to the respective maximum face amount listed below. Although it is anticipated that the Awarded Localities will participate in VPSA's 2012-1 QSCBs sale, if any Awarded Locality determines not to participate in VPSA's 2012-1 QSCBs sale or determines not to utilize the maximum amount of its Volume Cap Allocation, in either case such determination being made by such date set forth by VPSA, such portion of the Volume Cap Allocation not to be used by such Awarded Locality will be deemed waived and VDOE is authorized, at its discretion, to reallocate such Volume Cap Allocation to any other Awarded Locality participating in VPSA's 2012-1 QSCBs sale. The first priority use of the sale and investment proceeds of such QSCBs (the "Local Available Project Proceeds") shall be to finance qualifying costs of the respective Awarded Projects, as listed below.

The Awarded Localities and Awarded Projects:		
Awarded Locality	Awarded Project	Maximum Face Amount
Re-issued Allocations		
Buena Vista	Renovation of Parry McCluer Middle School	\$510,000.00
Gloucester County	Rebuilding Page Middle School	6,000,000.00
Louisa County	Repairing or rebuilding schools inÂ Louisa County	5,400,000.00
Richmond County	Additions and renovations to the existing Rappahannock High School	5,000,000.00
FPWL localities		
Caroline County	Construction of a new Bowling Green Elementary School	1,085,504.00
Richmond County	Additions and renovations to the existing Rappahannock High School	1,085,504.00
Smyth County	Construction of a new elementary school and renovations to Marion Primary School	2,171,007.50

An Awarded Locality must give first priority to the application of its Local Available Project Proceeds to complete the scope of work described in the approved project application for its Awarded Project.

VDOE is directed to establish a procedure to ensure that the Local Available Project Proceeds are used to finance public school projects within an Awarded Locality ("Additional Projects") to the extent such proceeds are in excess of the amounts needed to complete the scope of work on the

locality's Awarded Project. Such Additional Projects (i) must be projects that will qualify for QSCB financing under the applicable provisions of federal and Virginia law, (ii) must be able to utilize the unspent Local Available Project Proceeds within the three years after the issue date of the respective QSCBs and (iii) should be evaluated against the following criteria: consolidation projects, projects eliminating overcrowding, projects replacing facilities more than 35 years old, and projects creating school-wide, high-speed computer networks.

By December 31, 2012, VPSA shall provide to the Superintendent of Public Instruction the completed Internal Revenue Service reporting form or forms (then in effect for the QSCBs) for those QSCBs issued pursuant to the Volume Cap Allocations made to VPSA pursuant to this order. Any portion of such Volume Cap Allocations not used by December 31, 2012, will expire and be deemed waived by the VPSA, and I will direct VDOE to establish procedures for reallocating the waived Volume Cap Allocations.

I hereby authorize the Superintendent of Public Instruction to provide certificates of compliance with IRC Section 54F(c) as may be requested by VPSA.

This Executive Order shall be effective as of October 4, 2012, without any further act or filing.

Given under my hand and under the Seal of the Commonwealth of Virginia this 4th day of October, 2012.

/s/ Robert F. McDonnell, Governor

Attest:

/s/ Secretary of the Commonwealth